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GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

August 13, 1999

BY HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W., Room TWB204
Washington, D.C. 20021

Re: Policies and Rules for the Direct Broadcast Satellite Service,
IB Docket No. 98-21

Dear Ms. Salas:

This letter is being filed, in duplicate, to report that a copy of the attached letter, dated August 13, 1999, is being delivered by hand to Chairman Kennard, from Fran Ulmer, the Lieutenant Governor of the State of Alaska.

Should there be any questions regarding this matter, please contact this office.

Sincerely,

A handwritten signature in cursive script that reads "John W. Katz".

John W. Katz
Special Counsel to the Governor
Director, State/Federal Relations

Enclosures

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EX PARTE OR LATE FILED

FRAN ULMER
Lieutenant Governor
STATE OF ALASKA

August 13, 1999

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AUG 13 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

EX PARTE LETTER

Chairman William E. Kennard
Federal Communications Commission
445 12th Street, S.W., Room 8-B201
Washington, DC 20024

Re: Policies and Rules for the Direct Broadcast Satellite Service,
IB Docket No. 98-21

Dear Chairman Kennard:

We write to you concerning a matter of great importance to the citizens of the State of Alaska, the provision of direct broadcast satellite (DBS) services.

As you know, the Commission has long recognized its responsibility under the Communications Act of 1934, as amended, to promote the provision of communications services to all portions of the United States, including off-shore points such as the State of Alaska.¹ The Commission has taken a variety of steps over the years, including the adoption of geographic rate averaging and rate integration policies, to promote the provision of communications services to Alaskans on terms that are no different than those which apply to the provision of services to other Americans. Underlying the Commission's efforts in this area has been the recognition that communications services are a critical tool for the social, political, educational, and economic integration of the Nation.

In 1995, the Commission sought to promote the delivery of DBS services to Alaska and Hawaii by adopting a rule that required all new permittees to provide service to Alaska and Hawaii if such service is technically feasible from

¹ 47 U.S.C. § 151.

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their orbital locations and to condition the retention of channels assigned to then-current permittees at western orbital locations on the provision of such service.² The Commission found that service to Alaska and Hawaii is technically feasible and economically reasonable from the 110 degree W.L. slot, as well as locations to the west of that slot. The Commission said that a party acquiring channels at these locations should provide service to Alaska and Hawaii and, if it chose not to do so, would bear the burden of demonstrating that such service was either not technically feasible or not economically reasonable.³

The Commission has reiterated its commitment to promoting DBS service to Alaska and Hawaii in its notice proposing revisions to the rules governing DBS.⁴ In that notice, the Commission specifically sought comments "on how we can strengthen our rules regarding the provision of DBS service to Alaska and Hawaii."⁵

During the week of August 2, 1999, staff of the Governor's Office in Washington, D.C. met with representatives of EchoStar Communications Corporation and of DIRECTV, Inc. Those meetings were very useful and informative. Unfortunately, however, DBS service to Alaska remains limited and is not comparable to the service provided to other States. Alaskans have far fewer choices than other Americans do, often their signal reception is poorer, and the reception equipment required is often much larger.

The limited amount of DBS service is particularly distressing given the potential for satellite-delivered broadband internet services which DBS promises to deliver. In this regard, Congress has specifically stated that

² *Revision of Rules and Policies for the Direct Broadcast Service*, 11 FCC Rcd. 9712, 9761 ¶ 125 (1995). See 47 C.F.R. § 100.53(a), (b).

³ *Id.* at 9762 ¶ 128.

⁴ *Policies and Rules for the Direct Broadcast Satellite Service, Notice of Proposed Rulemaking*, IB Docket No. 98-21, FCC 98-25 (released February 26, 1998) ("NPRM").

⁵ *Id.*, ¶ 3. Commissioner Ness recently reiterated her commitment to making DBS service available to all geographic areas of the United States, including Alaska and Hawaii. *MCI Telecommunications Corp. and EchoStar 110 Corp.*, File No. SAT-ASG-19981202-0093, Call Sign S2232, Order and Authorization, FCC 99-109, Separate Statement of Commissioner Susan Ness (released May 19, 1999).

“Access to advanced telecommunications and information services should be provided in all regions of the Nation.”⁶

The State urges the Commission to address this problem as quickly as possible to ensure that Alaskans and residents of other off-shore locations do not become second class citizens with respect to any Commission-licensed service. When the Commission adopted its rate integration policy, it believed that satellite services would lead to the integration of off-shore points into the Nation’s communications systems.⁷ It is ironic indeed that, decades later, accomplishment of the Commission’s goals in that regard may be frustrated with respect to DBS.

The State respectfully reiterates the position it took in its comments in this docket.⁸ The Commission should adopt the “off-shore states” policy proposed by the State of Hawaii. That policy would require licensees of DBS channels at eastern orbital positions to demonstrate that they are serving Alaska and Hawaii before they can provide service from any additional eastern DBS channel assignments beyond their existing assignments.⁹ Adoption of this policy would increase the likelihood that DBS service would come to Alaska and Hawaii in a manner comparable to other states without unduly burdening DBS licensees.

The Commission should also (1) expand the scope of geographic service obligations to include foreign DBS providers and geostationary satellite orbit satellites in the Ka-band; (2) clarify that its existing and proposed geographic service rules apply to DBS licensees granted satellite authorizations prior to

⁶ 47 U.S.C. § 254(b)(2). Congress also stated that “Consumers in all regions of the Nation, including . . . those in rural, insular, and high cost areas, should have access to telecommunications and information services, including . . . advanced telecommunications services, that are reasonably comparable to those service provided in urban areas and that are available at rates that are reasonable comparable to rates charged for similar services in urban areas.” 47 U.S.C. § 254(b)(3).

⁷ *Establishment of Domestic Communications-Satellite Facilities, Second Report and Order*, 35 FCC 2d 844, 856-66 (1972), *aff’d on recon.*, 38 FCC 2d 665, 695-96 (1972), *aff’d sub nom. Network Project v. FCC*, 511 F.2d 786 (D.C. Cir. 1975).

⁸ Comments of the State of Alaska, April 6, 1998.

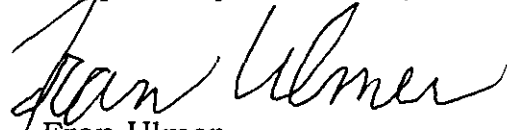
⁹ See *NPRM* at ¶ 34.

January 19, 1996, with respect to replacement satellites; (3) continue and clarify the provisions in Section 100.53(a) of its rules to require that DBS operators provide full service to Alaska and Hawaii by the end of their six-year western orbital slot milestones; and (4) clarify that the Commission's rules require that the DBS service provided to Alaska and Hawaii be equivalent in programming and power levels to the service provided to other States, so that Alaskans can use the same reception equipment as other Americans. Indeed, the requirement for equivalent service should extend to broadband internet services as well.

These conditions are critical to the ability of Alaskans, throughout the State, to obtain the full range of DBS services available to other Americans. Fulfillment of these four conditions is also necessary in order for Alaskans to receive DBS service at rates and with equipment comparable to such services elsewhere. Without prompt action, the Commission's long-standing policies of promoting the provision of communications services to all Americans will be dealt a significant blow.

Thank you for your attention to this matter. We very much appreciated the opportunity to meet with your staff last week to discuss this matter as well. Two copies of this letter are being submitted to the Secretary for inclusion in the public file.

Respectfully submitted,



Fran Ulmer
Lieutenant Governor

cc: Commissioner Gloria Tristani
Commissioner Michael Powell
Commissioner Harold Furchtgott-Roth
Commissioner Susan Ness
Ms. Magalie Roman Salas, Secretary (2 copies)